

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

AQUARION SERVICES COMPANY

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 145

Union

Case No. 34-UC-131

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that the hearing officer's rulings are free from prejudicial error and are affirmed; the Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; and the Union is a labor organization within the meaning of the Act.

The Petitioner and Union have been parties to a collective bargaining agreement since about April 2003, at which time the Petitioner granted voluntary recognition to the Union. The Petitioner filed the instant petition to clarify the bargaining unit to specifically exclude all five individuals classified as Operations Foremen and three of the five individuals classified as Maintenance Foremen on the grounds that they are supervisors under Section 2(11) of the Act. The Union contends that none of the disputed positions exercise supervisory authority under Section 2(11). The Union further contends that the instant petition is untimely filed because it is barred by the current collective bargaining agreement.

For the reasons noted below, I find that the petition is timely filed. I further find that Maintenance Foremen John Pereira, Mark Pagnozzi and Gene McEvoy are vested

with supervisory authority within the meaning of Section 2(11) of the Act, warranting their exclusion from the unit. However, I further find that the Petitioner has not established that the Operations Foremen in the Plant Operations Department, the Operations Foreman in Laboratory Operations, and the Operations Foreman in the Pump Station Operations Department are supervisors under Section 2(11) of the Act. Accordingly, I shall grant in part and deny in part the Petitioner's motion to clarify the unit.

I. Background Facts

The Petitioner provides water and wastewater system operation and engineering services to public and private entities, including the City of Bridgeport Water Pollution Control Authority (herein called the WPCA). Prior to 1997, the City of Bridgeport, acting as a municipal employer, operated the WPCA. During that time, the City of Bridgeport recognized several labor organizations, including the Union, as the collective bargaining representatives for various employee classifications. In 1997, the City of Bridgeport "privatized" the wastewater collection and treatment process by contracting with Professional Services Group, Inc, a subsidiary of U.S. Filtering Operations Services (herein PSG). PSG thereafter maintained the collective bargaining relationships with each union. In April 2003, the Petitioner replaced PSG and entered into new collective bargaining agreements with each union. The collective-bargaining agreement between the Petitioner and the Union, which is effective from April 18, 2003 through April 17, 2008, covers the following employees (herein called the Unit):

[T]hose employees employed by Aquarion at the Bridgeport Water Pollution Control Authority sites at 205 Bostwick Avenue, Bridgeport and 695 Seaview Street, Bridgeport, in the classifications set forth in Appendix A of this Agreement. All other employees, including but not limited to those employed as supervisors, confidential employees as defined by the National Labor Relations Act (NLRA), office clerical guards, part-time employees working less than twenty (2) hours per week, and temporary employees, shall be excluded from coverage under this Agreement.

The job classifications set forth in Appendix A of the collective bargaining agreement are occupied by 15 individuals in the following classifications: five Operations Foremen, five Maintenance Foremen and five Customer Service Representatives. As previously

indicated, the instant petition would eliminate from the Unit all employees classified as Operation Foremen and three Maintenance Foremen, leaving two Maintenance Foremen and five Customer Service Representatives in the Unit.

The Petitioner's operations involving the disputed individuals are divided into the following three separate and distinct departments: 1) Plant Operations; 2) Plant Maintenance; and 3) Field Operations.¹ Plant operations include the two wastewater treatment plants located in Bridgeport, one of which is located at 695 Seaview Street (herein called the Eastside plant) and the other located at 205 Bostwick Avenue (herein called the Westside plant). Plant operations also include two laboratories, one at each plant, and nine pump stations located throughout Bridgeport. Plant maintenance provides preventive and corrective maintenance at each plant. Field Operations provides preventive and corrective maintenance to the water collection system located throughout the city of Bridgeport.

Primary responsibility for the overall functioning of Petitioner's Bridgeport operations rests with Project Manager Frankie Campagne. Reporting to Campagne is Julio Segarra, Chief Plant Operator (CPO) for the Eastside plant; Jack Crosby, the CPO for the Westside plant; and John Ryan, Manager of Field Operations. Reporting to Segarra is Frank Wood, Assistant CPO for the Eastside plant. Reporting to Crosby is Dave Carfo, Assistant CPO for the Westside plant. Segarra also directly supervises the Plant Maintenance Departments at each plant. Crosby also directly supervises the Laboratory Operations and the Pump Station Maintenance Department.

Under the above collective bargaining agreement between the Petitioner and the Union, all covered employees, including those in dispute, are hourly paid, receive longevity pay, shift differentials, and stand-by pay. They share the same locker and lunch rooms used by all other hourly workers. They wear a different colored uniform than those worn by operators and plant maintenance employees.

II. The Timeliness of the Petition

As noted above, the Union moved to dismiss the petition on the ground that it is untimely. In support of this contention, the Union argues that the petition was filed

¹ The five customer service representatives in the Unit are part of the Customer Service Department.

during the term of the parties' five-year collective bargaining agreement, and there have been no recent significant changes in the disputed job classifications that would justify the processing of the petition at this time.

It is well established that the Board will generally not entertain UC petitions, even those involving alleged supervisory status, filed during the midterm of a contract because to do so would be too disruptive of the party's collective bargaining relationship. *Edison Sault Electric Co.*, 313 NLRB 753 (1994). In this regard, the Board has generally dismissed such UC petitions filed "shortly after" the execution of a new collective bargaining agreement, unless the party filing the petition reserved its right to file during the course of bargaining. *Wallace-Murray Corp.*, 192 NLRB 1090 (1971); *Northwest Publication, Inc. d/b/a San Jose Mercury and San Jose News*, 197 NLRB 213 (1972); *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977); *The Washington Post Co.*, 254 NLRB 168 (1981). However, the Board will entertain UC petitions filed at certain times during the existence of a collective bargaining agreement, such as when a classification is newly created or not clearly covered by the contract, or during the "open period" prior to the expiration of the agreement. *Arthur C. Logan Memorial Hospital*, supra, 231 NLRB at 779, fn. 4. It is also well-established that collective bargaining agreements with terms longer than three years operate as a bar to RC, RD, and RM petitions only for the first three years of the agreement. *General Dynamics Corp.*, 175 NLRB 1035 (1969); *General Cable Corp.*, 139 NLRB 1123 (1962).

The instant petition was filed more than three years after the execution of the parties' five-year collective bargaining agreement, thereby permitting the filing of a rival petition that would be far more disruptive to the parties' collective bargaining relationship than the instant UC petition. Under such circumstances, and noting again that the Board has applied the "open period" exception to contract bar rules to UC petitions, I see no valid basis for treating UC petitions differently than rival petitions that are filed after the third year of a contract of longer duration. Accordingly, I find no merit to the Union's Motion to dismiss the petition.²

² In reaching this conclusion, I find it unnecessary to pass on the Petitioner's contention that there have been sufficiently changed circumstances during the life of the agreement to support the processing of the instant petition.

III. Supervisory status of the disputed classifications

A. Operations Foremen in Plant Operations

1. Facts

The Operations Foremen in the Plant Operations Department work in either the Eastside or Westside wastewater treatment plant. Each plant treats residential and industrial waste water received from a collection system that includes catch basins along curbs, 300 miles of underground pipes, and a sewer system, all of which allow the water to flow from its points of origin to one of the two treatment plants. Once the water is collected within the plant, it is progressively treated in various stages. During the first stage, the water flows into a primary tank where all undesirable material, such as bottles, cans and tires, are removed. Next, the water proceeds to another tank where it is treated with biological organisms that consume any remaining soluble nutrient that did not settle. From there, the water is chlorinated in a separate tank and then discharged into the Long Island Sound.

Each plant has a control room with a computerized system that monitors critical data related to the operation of the plant equipment and the “effluent” quality of the treated water. As described in more detail below, Plant Operation employees make a number of daily “process control changes,” either directly from the control room or by valves and pump switches located throughout the plant, which affect the effluent quality of the released waste water. The nature of the “process control changes” implemented is based on a number of ever-changing variables, such as the amount of flow entering the plant during inclement weather, the nature of the flow (i.e., rainwater versus chemical industrial flow), temperature, tidal changes, and plant maintenance issues.

Each plant operates and is staffed around the clock, with three shifts (7 a.m. to 3 p.m., 3 p.m. to 11 p.m. and 11 p.m. to 7 a.m.) on Monday through Friday, and two shifts (7 a.m. to 7 p.m. and 7 p.m. to 7 a.m.) on weekends. Each shift is staffed by one of the Operations Foremen in dispute (also referred to herein as shift foremen), and two other employees classified either as operators, operator-in-training or utility workers (herein collectively referred to as “operators”). All operators are represented by AFSCME, Local 1303 (herein called Local 1303). The CPO at each plant works Monday through Friday from 7:00 a.m. to 3:00 p.m.

At the start of a shift, the Operations Foreman coming on duty will meet with either the CPO or the Operations Foreman going off-duty. During these meetings, the incoming Operations Foreman is briefed about the events of the prior shift and/or events scheduled for the upcoming shift. The CPO also provides the Operations Foreman with oral instructions to be carried out that day. The Operations Foreman relays these instructions to the operators on that shift.

Throughout their shift, Operations Foremen are primarily responsible for monitoring the processing operation of the facility to which they are assigned. They do so by observing the computers, meters, and gauges that measure the chemical composition of the waste water, the amount of flow into each facility, the accumulation, flow and removal of sludge (waste), and the condition of the plant's pumps, gates, and other operating equipment. In conducting such monitoring, Operations Foremen must follow written Standard Operating Procedures (SOP), which set forth the parameters to be observed and the sequence to be followed in pursuing a corrective course. If the Operations Foreman discovers an abnormal reading or a reading that indicates a process that exceeds normal parameters, he routinely contacts the CPO for further instruction. Based on their experience and training, Operations Foremen may on their own implement, or direct operators to implement, certain "process control changes," consistent with the SOPs, in order to ensure proper effluent quality. Examples of such "process control changes" would be altering the type and amount of chemicals used in the treatment process, and directing the pumping of sludge from the "gravity thickener." During rain events, the number and scope of such "process control changes" increases, particularly as it relates to the restriction of flow into the plant, which might include bypassing untreated water flow directly into the Long Island Sound.

Operations Foremen also make "rounds" of the plant, each lasting about a half hour, to monitor leaks and verify that plant equipment is operating properly. The testimony varied regarding how many daily rounds are completed by each Operations Foreman, ranging from two per shift (collectively about an hour per shift) to eight per shift (collectively about four hours or more per shift). Operations Foremen also assist operators as necessary by, for example, unclogging a pump.

One of the two operators on each shift works in the control room monitoring computer read outs, performing routine tests, and measuring samples. The other operator works in other parts of the plant measuring tank levels and running pumps. Based on the readings produced by the plant's computers, meters and gauges, each operator physically effectuates the "process control changes" to the plant by adjusting valve settings, pumping rates, chemical dosing rates, chemical changes, "D.O." levels, sludge handling, aeration rates, and the number of blowers and/or pumps in use. In making these adjustments, operators must also closely follow the written SOPs.

In or about March 2006, immediately preceding the filing of the instant petition, the Petitioner simultaneously discharged four individuals classified as Operations Foremen, and transferred at least two other similarly classified individuals, because they did not have the proper State certification. In this regard, the Bridgeport plants are classified as Class IV plants, the highest State certification, by the Connecticut Department of Environmental Protection (DEP), the agency that regulates all wastewater treatment plants in the state. Under DEP regulations, the CPO for each Bridgeport plant must hold a Class IV license, and in the CPO's absence, a shift must be operated by a Class-III certified "shift supervisor." DEP regulations further provide that such "shift supervisors" must have "supervisory responsibility for the operation and maintenance" of the plant and can independently effectuate "process control changes."³ Although this regulation has been in effect for at least the past 20 years, the DEP only began assiduously enforcing it in late 2005. Upon request from the Petitioner, the DEP subsequently approved a "watchmen's shift," during the hours of 11 p.m. to 7 a.m., during which time the presence of a Class-III "shift supervisor" is not required. Since March 2006, the Petitioner has covered its operations by assigning the three remaining Class-III certified Operations Foremen to additional shifts, implementing the watchmen's shift, and hiring new or assigning existing Class IV license holders to remaining shifts. Despite the recent enforcement action by the DEP, it is undisputed that there has been no change to the day-to-day responsibilities and duties of the Operations Foremen.

³ A Class-III certification can be obtained by passing a State-conducted examination. On December 1, 2005, the DEP disqualified three Operations Foremen from acting as "shift supervisors" because they did not qualify to take the exam. As previously noted, five other Operating Foremen subsequently failed the Class III test, four of who were discharged.

It is undisputed that Operations Foremen do not participate in the hiring or firing process, nor do they evaluate the performance of operators, approve requests for vacation time or other requests for time off, handle employee grievances, or make recommendations for promotions, pay raises, and employee transfers. Apart from the meeting with the CPO at the outset of their shift, as described above, there is no evidence that Operations Foremen attend supervisory meetings. Although they have more experience and training than operators, Operations Foremen do not train operators.

With regard to the issuance of discipline, CPO Segarra generally testified that he has reminded Operations Foremen that they have the authority to issue verbal warnings and other discipline, as necessary, to operators. However, the Petitioner failed to present any evidence to show that Operations Foremen have ever issued such discipline, nor did Segarra provide specific testimony regarding the names of those Operations Foreman to whom he had provided such authority, or the approximate dates of such discussions. As noted below, the Union's witnesses each testified that they have never disciplined an employee, recommended such an action, or had such authority conferred on them by management.

The Petitioner presented three witnesses, CPO's Segarra and Crosby, and Steve Bullard, the former Area Manager for the two Bridgeport plants, in support of its contention that the Operations Foremen are supervisors. Each of these individuals testified that the Operations Foremen, based on their experience and knowledge, independently decide which "process control changes" to implement. According to these witnesses, Operations Foremen then select, assign, and direct the two operators, based on their respective experience level, to execute those decisions. According to their testimony, "process control changes" can only be determined by the CPO or Operations Foreman, and not by the operators. Further, each testified that when the CPO is not present at the plant or is otherwise unavailable, the Operations Foreman is the sole individual charged with making the "process control changes" and directing operators to make those changes. They also testified that Operations Foremen have been told that they do not need approval from the plant CPO before authorizing "process control changes," unless it is significant or drastic in scope. Such significant

events would include taking a tank off-line or any other act causing a violation of the Petitioner's permit. However, emergency actions, even if significant, do not need CPO approval. Thus, if toxic waste enters the plant, the Operations Foreman can direct an operator to shut various gates or direct the flow to an empty tank. With regard to the SOPs that Operations Foremen are required to follow, they testified that the SOPs do not address all possible "process control changes" that may occur at the plants. For example, there are no SOPs for decisions affecting "wasting,"⁴ or the coordination of holding tank levels. Moreover, they testified that in some cases, Operations Foremen retain discretion in the sequence of timing of the operating procedures, and in other cases, can deviate from the SOPs if, for example, certain equipment required by the SOP is not in service.

In addition to the foregoing, CPO's Segarra and Crosby testified that Operations Foremen are responsible for inspecting and ensuring that operators have properly implemented the "process control changes." In support of this testimony, the Petitioner introduced a verbal warning that it issued to former Operations Foreman Wendell Randolph on November 3, 2003, for failing to ensure proper plant operations. It also introduced a suspension that it issued to Randolph on March 22, 2004 for failing to adequately oversee the work performed during the night shift because, according to the suspension letter, he was "responsible for supervision of plant operations" and "the supervision of the treatment plant operations staff." The record does not indicate any other facts underlying either of these disciplines. Segarra and Crosby also testified that Operations Foremen are the highest ranking authority at the plant when they are not present, including evenings, nights and weekends. According to Segarra and Crosby, during these times, Operations Foremen are responsible for the safe and proper operation of the plant, and exclusively provide direction to and assign work to operators. In addition, the Petitioner introduced one performance review issued to an operator that refers to two Operations Foremen as that operator's "supervisors." The record shows that the Petitioner provided several, but not all, Operations Foremen with alcohol and substance abuse training pursuant to federal regulations.

⁴ However, CPO Crosby admitted that he generally makes most decisions involving "wasting."

In contrast to the above evidence, the Union presented four witnesses: two current Class III-certified Operations Foremen, Carlos Paiva and Doreth McKenzie, and two former Operations Foremen, Lawrence Weller, who worked as an Operations Foreman from 1992 until March 2006, and Mario Paiva, who worked as an Operations Foreman from 1993 through March 2006. Both of the latter employees were transferred to other positions, Paiva to Operations Foreman for pump stations operations and Weller to operator, following the state's recent decision to enforce certification regulations, as described above.

According to these witnesses, Operations Foremen only provide the following two types of directions to operators: 1) the relay of those instructions that are assigned by the CPO or Assistant CPO to operators at the outset of the day shift; and 2) routine instructions involving "process control changes" consistent with the written SOPs. In this latter regard, they testified that, with few exceptions, all plant equipment operates automatically. To the extent there are variations in normal operating parameters, or mechanical problems arise, they consult the SOPs and report any problems directly to the CPO, who provides further instructions. They further testified that they select which operator to perform a specific "process control change" based only upon the location of the operator at the time the need arises, and not on the basis of their particular work abilities or qualifications.

They further testified that they have no oversight responsibility for the actions engaged in by operators on their shifts. In this regard, each testified that they have never disciplined an employee, recommended such an action, or had such authority conferred on them by management. With regard to overtime, they testified that they provide occasional input to management regarding the need for overtime, but only the CPO or Assistant CPO can approve overtime. If approved, the Operations Foremen use a rotating overtime sheet, as mandated by the Local 1303 collective bargaining agreement, to contact an operator for their interest in working overtime, which is voluntary.

2. Conclusion

It is well-established that the burden of proof rests upon the party alleging that an individual is a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706

(2001); *Bennett Industries*, 313 NLRB 1363 (1994). The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999). The Board has found that a particular indicia of supervisory status has not been established if the evidence is in conflict or otherwise inconclusive regarding that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are also insufficient to establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Indeed, a lack of evidence is construed against the party asserting supervisory status. *The Wackenhut Corp.*, 345 NLRB No. 53, slip op. at 5 (2005).

Based upon the foregoing and the record as a whole, I find that the Petitioner has failed to satisfy its burden of establishing that the Operations Foremen in the Plant Operations Department possess and exercise supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the absence of any evidence that Operations Foremen have the authority, in the interest of the Petitioner, to hire, transfer, suspend, layoff, recall, promote, discharge, or reward other employees, or to adjust their grievances, or to effectively recommend any of these actions. Thus, the only potential remaining basis for finding that Operations Foremen are supervisors is their direction and assignment of the work performed by operators, and their involvement in the disciplinary process.

More specifically, with regard to the assignment and direction of the work performed by the operators, there is no evidence that the Operations Foremen have any input into the initial scheduling or assignment of operators. To the extent that the Operations Foremen re-assign or direct operators to perform other assignments in the course of a shift, including the implementation of “process control changes”, such authority is routine in nature and guided by non-discretionary factors, primarily availability, as well as the Petitioner’s established policies and procedures set forth in the SOPs. To the extent that the Petitioner’s witnesses testified that Operations Foremen make certain determinations based upon their own assessment of either the relative skills and abilities of the operators or the nature and extent of the work being

assigned to operators, the testimony of the Union's witnesses is directly contrary, making the evidence inconclusive at best. *Phelps Community Medical Center*, supra at 490. See also, *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997); *Quality Chemical, Inc.*, 324 NLRB 328, 330 (1997); *Kent Products, Inc., White Cloud Division*, 289 NLRB 824 (1988). Thus, there is insufficient evidence that their assignment and direction of the work performed by the operators requires the exercise of independent judgment. *McCullough Environmental Services*, 306 NLRB 565 (1992)(lead operators at a wastewater treatment plant); *S.D.I. Operating Partners, L.P., Harding Glass Division*, 321 NLRB 111 (1996)(leadman); *Chevron Shipping Co.*, 317 NLRB 379 (1995)(watch officers); *Leland Stanford Jr. University*, 194 NLRB 1210, 1214 (fire captains)(1972); *Security Guard Service, Inc.*, 154 NLRB 8 (1965)(shift supervisor); *NLRB v. Meenan Oil Co.*, 139 F. 3d 311, 321-322 (2nd Cir. 1998). In addition, there is no evidence that Operations Foremen can require any employee to report to work, or that they have ever done so. See *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1335 (2000). To the extent that the SOPs may not address a particular situation, the CPOs may always be contacted by the Operations Foremen. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 393 (1989). Finally, the two disciplines issued to Operations Foreman Randolph in 2003 and 2004 containing conclusionary language that the disciplines were based upon the failure to ensure plant operations and to supervise plant operations and staff, without further explanation, are insufficient to establish that the Operations Foremen are held accountable for their direction of the work performed by the operators. See *Northeast Utilities Service Co. v. NLRB*, 35 F.3d 621, 625-626 (1st Cir. 1994).

With regard to their alleged involvement in the disciplinary process, the sole evidence in support of this contention consists of the testimony of CPO Segarra, who generally testified that he has reminded Operations Foremen that they have the authority to issue verbal warnings and other discipline, as necessary, to operators. However, as previously noted, four former and present Operations Foremen testified that they have never disciplined an employee, recommended such an action, or had such authority conferred upon them by management. Under such circumstances, the Petitioner has failed to satisfy its burden of establishing that the Operations Foremen in

the Plant Operations Department have the authority to discipline employees. *Volair Contractors, Inc.*, supra at 675; *Phelps Community Medical Center*, supra at 490.

It is well-established that the reliance on certain secondary indicia of supervisory status, such as employee perception, State regulations, and the fact that Operations Foremen are at times the highest authority in the plant, cannot confer supervisory status in the absence of the primary indicia of supervisory status enunciated in Section 2(11) of the Act. See *Carlisle Engineered Products, Inc.*, 330 NLRB 1359, 1361 (2000); *Ryder Truck Rental, Inc.*, supra, 326 NLRB at 1387 n. 8; *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997); *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, supra. In this regard, I note that supervisory status under the Act cannot be accorded to the Operations Foremen simply because of the important responsibilities imposed upon them and the conceivable implications of their actions during an emergency. While their good judgment and skill certainly impacts upon the safety and well being of the operators and the public during an emergency, it is an insufficient basis upon which to establish their supervisory status under the Act. See *Mississippi Power and Light Co.*, 328 NLRB 965, 968-971 (1999), citing *Northeast Utilities Service Company v. NLRB*, supra. The DEP's recent efforts to enforce regulations requiring that each shift is staffed with a Class-III certified "shift supervisor" who can independently effectuate "process control changes" is insufficient to confer supervisory status, especially in the absence of any evidence that the Petitioner conferred additional authority on the Operations Foremen as a result of the DEP's efforts.

Finally, to the extent that secondary indicia may be applicable, I note that a finding of supervisory status of the Operations Foremen would create an unrealistic ratio of supervisors to unit employees (i.e., one Operations Foreman as supervisor to two non-supervisory operators), but that a finding of non-supervisory status would not create an unreasonable ratio. See *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993); *McAlester General Hospital*, 233 NLRB 589 (1977); *Brattleboro Memorial Hospital*, 226 NLRB 1036, 1038 (1976).

Accordingly, I find that the Operations Foreman in the Plant Operations Department are not supervisors under Section 2(11) of the Act.

B. Operations Foreman in Laboratory Operations

1. Facts

As noted above, the Petitioner maintains a laboratory within each plant that collects and analyzes water samples. The Petitioner employs two lab technicians, one at each plant. Both are represented by Local 1303. One Operations Foreman, Jose Diaz, rotates between the two plants and assists each lab technician. All three individuals work from 7 a.m. to 3 p.m., Monday through Friday. Operations Foreman Diaz reports directly to Westside CPO Crosby.

The lab technicians follow the same routine each day. At the outset of their shift, the lab technicians turn on and calibrate various pieces of laboratory equipment, and then collect and analyze water samples in accordance with written operating procedures. At least four times daily, they also check the water temperature and chlorine levels from various holding tanks, and record those readings in a log. They also test some samples internally with a spectrometer, and separately submit other samples to an outside testing laboratory for analysis, as required by DEP regulations. If any of their readings indicate that test samples are outside normal parameters, either the lab technician who took the reading or Diaz alerts the CPO or Assistant CPO about these developments. They, in turn, direct Diaz to take the appropriate remedial action. Neither the lab technicians nor Diaz perform any “process control changes.”

Diaz inputs the test results of all water samples into the laboratory’s computer. He also prepares daily reports regarding these test results to Project Manager Campagne or other supervisors, as necessary. During the course of the work day, Diaz may accompany the lab technicians as they collect test samples, and may also assist them in performing some of their above duties, i.e. calibrating equipment, as it becomes necessary. Diaz reports to the Eastside or Westside plant on a daily basis depending on the location from which he needs to retrieve data for his reports. Unlike the Operations Foreman position discussed above, Diaz’ position does not need to be certified by the State.

The Petitioner presented Area Manager Bullard in support of its contention that Diaz is a supervisor. He generally testified that Diaz is responsible for the work performed in both labs; provides daily assignments to these technicians; and ensures

that they properly take and analyze the required daily samples.⁵ However, apart from this general testimony, Bullard did not provide any specific evidence to show the nature of those instructions and assignments.

The Union presented the testimony of Carlos Paiva, who was the Operations Foreman in the laboratory from 1998 through March 2006, Diaz' immediate predecessor. According to Paiva, while he periodically instructed the lab technicians on how to calibrate equipment, he did not provide instructions on their remaining work, which he labeled as routine in nature. Paiva further testified that during the time he worked as the Operations Foreman in the laboratory, he did not train or evaluate the performance of either technician nor did he discipline or recommend discipline. He also testified that overtime was assigned to the lab technicians only after securing approval from the CPO, and in strict accordance with the posted voluntary overtime rotation list, as mandated by the Local 1303 collective bargaining agreement. Diaz, who was transferred into his current position in March 2006, was not called to testify by either party.

2. Conclusion

Based upon the foregoing and the record as a whole, I find that the Petitioner has failed to satisfy its burden of establishing that the Operations Foreman in laboratory operations is a supervisor within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the absence of any evidence that Diaz has the authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward, or discipline other employees, or to adjust employee grievances, or to effectively recommend such actions. Thus, the only potential remaining basis for finding that Diaz is a supervisor is Bullard's testimony that Diaz directs and assigns the work performed by the lab technicians. In this regard, there is insufficient evidence to show that Diaz exercises independent judgment in assigning and directing the work of the two lab technicians. *Volair Contractors, Inc.*, supra; *Phelps Community Medical Center*, supra. Rather, it appears that his duties involve the testing and recording of water samples in conjunction with the lab technicians, and that any incidental assignment or direction of the work

⁵ The record shows that about six months before Diaz became the Operations Foreman for the laboratory, Bullard began devoting only about 20% of his time to the Bridgeport plants and the remainder of his time to one of the Petitioner's other plants located in Massachusetts.

performed by the lab technicians is routine in nature and does not require the exercise of independent judgment. See *Millard Refrigerated Services, Inc.*, 326 NLRB 1437 (1998); *Byers Engineering Corp.*, supra. I also note the absence of any evidence that Diaz is held accountable in any manner for the work performed by the lab technicians. See *Northeast Utilities Service Co. v. NLRB*, supra.

Accordingly, I find that the Operations Foreman in laboratory operations is not a supervisor under Section 2(11) of the Act.

C. Operations Foreman in Pump Station Operations

1. Facts

The Pump Station Operations department is responsible for maintaining the nine pump stations located throughout the City of Bridgeport. The department is staffed by disputed supervisor Operations Foremen Mario Paiva and two employees, both of whom are represented by Local 1303. Collectively, these individuals operate and monitor the nine pump stations. They work from 7 a.m. to 3 p.m., Monday through Friday. Paiva reports directly to Westside CPO Crosby.

Each day, Paiva and one of the two employees, “maintainer” Rudy Valentine, drive to all nine pump stations and ensure that each station is operating soundly. In this regard, they jointly inspect the operational state of the station’s pumps, bar screens (which restrict debris from entering the pump and clogging the system), and check the station’s overall cleanliness, including the immediate surrounding grounds. Paiva also tests the station’s generators, alarm points, and the operating parameters of its equipment. He records his observations, and all station repairs he and Valentine perform, in a log book located at each station. If Paiva determines that the pump station warrants a major repair, he submits a work order directly to the Plant Maintenance department or, depending on the complexity of the repair, contacts CPO Crosby for further instruction. While Paiva performs his duties, maintainer Valentine performs preventive maintenance on the pumps at each station, and performs any minor repairs that he or Paiva detect. In addition, two or three times each week, CPO Crosby assigns a second utility worker to this operation, and all three employees jointly clean the stations by, for example, raking debris away from the bar screens. While they perform their respective tasks at the pump stations, Paiva is responsible for ensuring that

Valentine and the other worker comply with OSHA's "confined space" safety requirements. Although overtime is rarely worked in this department, CPO Crosby exclusively determines whether any such overtime is warranted. It appears that Paiva may make recommendations in this regard, but the record does not disclose whether Crosby necessarily follows those recommendations. Paiva, as the Operations Foreman assigned to the Pump Station Operations department, does not need to be certified by the State.

It is undisputed that Paiva does not participate in the hiring or firing process, nor does he evaluate the performance of Valentine or the other crew member, approve requests for vacation time or other requests for time off, handle employee grievances, or make recommendations for promotions, pay raises, and employee transfers. With regard to discipline, it appears that Paiva is merely limited to reporting the activities engaged in by Valentine and/or the utility person on the crew to Segarra, and cannot directly discipline either employee. There is no evidence that Paiva attends supervisory meetings or provides training to crew members.

The Petitioner presented CPO Segarra and Field Operations Manager Ryan in support of its contention that Paiva is a supervisor. Segarra testified that Paiva assigns work to Valentine and any other workers assigned to that operation, generally oversees their work, and ensures that their work is completed. Ryan testified that in 2004, when he oversaw this department, he disciplined former Operations Foreman Ken Wilcox for failing to ensure that the pump stations were painted and shoveled clean. On another occasion, Ryan issued a verbal warning to Wilcox for failing to report a motor vehicle accident sustained by Valentine involving one of the Petitioner's vehicles.

Paiva testified that although he is "in charge" of his crew, he does not assign work to other employees. Rather, according to Paiva, Valentine visually inspects and "automatically" implements any necessary repairs based on his own inspections, and also completes other tasks that are routine in nature without any prompting from Paiva.

2. Conclusion

Based upon the foregoing and the record as a whole, I find that the Petitioner has failed to satisfy its burden of establishing that Paiva, the Operations Foreman in Pump Station operations, is a supervisor within the meaning of Section 2(11) of the Act. In

reaching this conclusion, I note the absence of any evidence that Paiva has the authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward, or discipline other employees, or to adjust employee grievances, or to effectively recommend such actions. Thus, the only remaining basis for finding that Paiva is a supervisor is the direction and assignment of the work performed by the maintainers and utility workers assigned to his crew. In this regard, I note that there is insufficient evidence to show that Paiva exercises independent judgment in assigning and directing the work of those employees. Rather, it appears that his duties involve the inspection of the pump station's general operating condition and its state of cleanliness, and the recordation of observations and repairs performed at those stations, and that any incidental assignment or direction of the work performed by other employees is routine in nature and does not require the exercise of independent judgment. See *Millard Refrigerated Services, Inc.*, supra; *Byers Engineering Corp.*, supra. I also note the absence of sufficient evidence showing that Paiva is held accountable in any manner for the work performed by the employees with whom he works. See *Northeast Utilities Service Co. v. NLRB*, supra. In this regard, the disciplinary actions issued by Ryan to Wilcox, Paiva's predecessor, appear to be based upon Wilcox's failure to perform his own duties, rather than for failing to properly supervise other employees.

Accordingly, I find that the Operations Foreman in Pump Station Operations is not a supervisor as defined in the Act.

D. Maintenance Foremen in the Plant Maintenance Department

1. Facts

The Plant Maintenance department, which is overseen by Eastside CPO Segarra, performs all preventive and corrective repairs, including mechanical, electrical and plumbing, on all equipment and machinery at each treatment plant and the nine pump stations. Examples of preventive maintenance include changing the oil and filters of machinery, and greasing equipment. Corrective maintenance generally involves repairing broken equipment. As department head, CPO Segarra is responsible for reviewing the efficiency and reliability of the equipment and machinery at the plants and pump stations, and overseeing the installation, rebuilding, and removal of equipment. There are two Maintenance Foremen in the Plant Maintenance department, disputed

supervisor John Pereira, and Venice Appleby, who the Petitioner does not seek to exclude from the Unit as a supervisor. Both Pereira and Appleby report directly to Segarra. The remainder of the Plant Maintenance Department currently consists of 12 employees: nine “maintainers” represented by Local 1303, two electricians represented by the International Brotherhood of Electrical Workers Local 488, and one plumber represented by Plumbers Local 777. Most of these maintenance employees have significant seniority with the Petitioner and have performed the same repairs on multiple occasions. All of the employees in the Plant Maintenance department work from 7 a.m. to 3 p.m., Monday through Friday. Maintenance employees typically work in crews of two or three.

At the beginning of the daily shift, Segarra provides Pereira with written instructions outlining the plant maintenance tasks to be performed that day. According to Pereira, Segarra also provides him with a list indicating which crews, including the specific crew composition, are to perform those tasks. In contrast, Segarra testified that Pereira assigns each employee to perform each task. Regardless of who makes the actual assignment, it appears that the nature of the repair work often dictates which maintenance employee will perform the repair. For example, the lone plumber is assigned to all plumbing tasks and the two electricians are assigned to all electrical tasks. With regard to the assignment of maintainers, however, both Bullard and Segarra testified that Pereira assigns such employees based on Pereira’s knowledge of each mechanic’s skill level and the nature of the task. Thus, according to Segarra, Pereira prioritizes work orders as they arise in the course of the day, and then assigns those work orders to maintainers based upon Pereira’s determination as to who is best qualified to perform the work. In this regard, Segarra described how Pereira recently used his own discretion, without involving Segarra, to determine which maintenance employee was best qualified to inspect the plant’s scrubber system.

Following his meeting with Segarra, Pereira holds a daily meeting with the department’s maintenance employees, where he relays Segarra’s instructions and assigns crews accordingly. On occasion, Segarra meets directly with the maintenance crews and distributes work assignments. Thereafter, Pereira visits the various work sites within the plant to ensure that all work complies with the Petitioner’s safety

regulations. He also retrieves necessary tools for the maintenance crews, assists them in performing their duties, and performs the physical work himself in the event of a shortage of maintainers.

Segarra testified that he spends “very little” time with any of the 12 maintenance employees on a daily basis and that, as a result, Pereira bears the primary responsibility for supervising and directing these employees. Segarra further testified that Pereira assigns and directs the maintenance employees in response to a sudden equipment breakdown, and has sole discretion in choosing which employee to perform the task and which jobs can be re-prioritized because of the sudden equipment failure. As an example, Segarra described how Pereira recently removed an electrician from his original assignment to repair a “gravity belt thickener” that was not working and required immediate attention.

With regard to oversight of the work performed by maintenance employees, Segarra testified that both he and Pereira separately “rove” throughout the plant during the work day overseeing the repairs and ensuring that maintenance employees complete their tasks. In this regard, Segarra testified that while Pereira is at a work site, he is solely responsible for inspecting the quality of an employee’s work, measuring the progress of the task, and is authorized to direct employees to correct deficient work performance. In contrast, Pereira testified that he does not “rove” the plant, and only goes to a work site if his assistance is needed. Once there, he only assists the maintenance employees, but does not direct their work.

According to Pereira, if equipment unexpectedly breaks down after the initial work assignments are distributed, he contacts Segarra to inform him about the situation and to obtain his consent before switching a crew from its original assignment. However, in the event of an emergency, any plant employee, including Pereira or an operator, can direct the maintenance employees to deal with the emergency. As noted above, Pereira testified that other than emergency situations, he does not direct maintenance employees in the performance of their tasks, nor does he have the authority to do so.

Overtime opportunities occur several times weekly whenever an essential piece of equipment breaks down near the end of the regular work day, or at times when

maintenance employees are not at work. Under those circumstances, Pereira consults with Segarra to determine if overtime will be assigned to address the repairs. The record does not clearly disclose the extent of Pereira's overtime recommendations to Segarra, or whether Segarra adopts those recommendations. Moreover, Pereira testified that he does not approve overtime, or make recommendations in this regard. He further testified that when Segarra approves overtime, maintenance employees are selected based on the rotating overtime list provided for in the Local 1303 collective bargaining agreement.⁶

With regard to discipline, Segarra testified, contrary to Pereira, that Pereira disciplines or recommends the discipline of maintenance employees. In support of Segarra's testimony, the Petitioner introduced a verbal warning issued on January 13, 2006 to maintainer Manuel Moreno. The warning is signed by Pereira under the heading "Supervisor". The warning states that it was issued due to Moreno's failure to complete "an assignment by your immediate supervisor (Pereira)," and for subsequently falsely informing Pereira that the task was completed. The warning, authored by Segarra, states, "both J.P. [Pereira] and I agree that the 'VERBAL WARNING' is merited due to unacceptable work performance." According to Segarra's un rebutted testimony, Pereira recommended the issuance of this verbal warning, and Segarra adopted that recommendation. The Petitioner introduced two other warnings issued to Moreno. The first, a written warning dated April 29, 2003, states that Moreno must contact "your supervisor, John Pereira or Richard Althouse [an admitted supervisor] prior to 5:00 or you will be deemed to have abandoned your job and your employment will be terminated." The second, a written warning dated June 10, 2003, cites Moreno for tardiness one day after "you were talked to about coming in late by John Pereira." Pereira testified that he did not recall the events underlying the latter two warnings and did not recommend discipline in either circumstance. The record reveals that Pereira also informally resolves employee grievances before a formal grievance is filed pursuant to the Local 1303 contract.

⁶ On occasion, Pereira also reports to work on an overtime basis. According to Segarra, on those occasions, Pereira is the "highest ranking authority" in the Plant Maintenance department on site.

Finally, I take administrative notice that on September 30, 2003, the Region issued a Complaint and Notice of Hearing in Case No. 34-CA-10542 in which it alleged, and the Petitioner admitted, that Pereira was a supervisor within the meaning of Section 2(11) of the Act. During the hearing in that matter, Pereira testified that he was a supervisor who supervised about 15 maintenance employees, and the Administrative Law Judge described Pereira as the maintenance department supervisor, but discredited his testimony in other respects. No exceptions were filed, and in the absence of exceptions, the Board adopted the Administrative Law Judge's decision.

2. Conclusion

Based upon the foregoing and the record as a whole, I find that the Petitioner has satisfied its burden of establishing that Pereira is a supervisor within the meaning of Section 2(11) of the Act. In this regard, despite the stark testimonial contradictions in the record, I find that, on balance, the record establishes that Pereira uses independent judgment to assign and direct the work of the maintenance employees. With regard to the assignment of work, the Petitioner provided specific examples showing that Pereira assigns work to maintenance employees based upon his own determination as to who is best qualified to perform the work. See *Rose Metal Products, Inc.*, 289 NLRB 1153 (1988). Indeed, the un rebutted verbal warning issued to Moreno in January 2006, signed by Pereira, reflects the fact that Pereira assigned work to Moreno for which the latter was disciplined because he failed to complete it. Such evidence is buttressed by Pereira's sworn testimony at an unfair labor practice hearing attesting to the fact that he is a supervisor who directs the work of maintenance employees. Moreover, Segarra testified essentially without contradiction that Pereira effectively recommended the issuance of the above verbal warning to Moreno as recently as January 2006.

Accordingly, I find that Maintenance Foreman John Pereira is a supervisor within the meaning of Section 2(11) of the Act and I shall exclude him from the Unit.

E. Maintenance Foremen in Field Operations

1. Facts

The Field Operations department, overseen by Field Operations Manager John Ryan, is responsible for maintaining 8,500 catch basins, and cleaning and televising 30 miles of sewer lines and pipes each year per its agreement with the City of Bridgeport.

The department is staffed by Maintenance Foremen Mark Pagnozzi, Gene McEvoy and Doreen Klepacki.⁷ The remainder of the department consists of approximately 26 field maintenance employees, known as “maintainers,” who are represented by AFSCME, Local 1522 (herein called Local 1522). All of the above employees work from 7 a.m. to 3 p.m., Monday through Friday. However, Pagnozzi and McEvoy are each on call every other week during nights and weekends to handle emergency calls. The department maintains a fleet of approximately 53 vehicles, including backhoes, pay loaders, dump trucks, clam trucks and vacuum trucks.

The 26 field maintenance employees are broken down into various crews and perform the bulk of the physical maintenance, as described below. The record does not disclose the number of employees on each crew. Although they are generally assigned to the same crew each day, most are cross-trained to work on all vehicles and equipment, and crew composition can change on a daily basis. The “construction crew” uses backhoes to repair broken sewer lines and install and repair catch basins and manholes. According to Manager Ryan, at least one maintenance employee represented by Local 1522, Fred Torres, serves as the foreman on the construction crew. Although Torres directs the construction crew members in the daily performance of their work, both Pagnozzi and McEvoy oversee that work as well. The record does not further describe Torres’ supervisory status or authority. The “clam crews” operate clam trucks that remove debris from catch basins. A third set of crews operate vacuum trucks equipped with a high pressure water system for cleaning pipes. A fourth crew, known as the “television crew,” uses television cameras to inspect the structural integrity of the pipe system, and record those findings. Finally, four maintenance employees are specifically assigned to maintain all department vehicles.

Maintenance Foremen Pagnozzi and McEvoy report directly to Manager Ryan. According to Pagnozzi, each day Ryan determines the daily work assignments to be completed by each crew and informs Pagnozzi and McEvoy about these assignments, either at the end of their shift or telephonically at the beginning of the next shift. In turn, Pagnozzi and McEvoy, without Ryan being present, hold a daily meeting at the outset of

⁷ The Employer is not seeking to exclude Klepacki, who functions as a dispatcher, as a supervisor under the Act.

the work day with the 26 maintainers and relay Ryan's instructions. According to Ryan, the decisions of what tasks to assign on a daily basis, and the selection of which employees to perform those assignments, are made by himself, Pagnozzi and McEvoy. In this regard, Ryan testified that he makes those decisions on about 30% of the assignments, and Pagnozzi and McEvoy determine the remaining assignments. According to Ryan, Pagnozzi and McEvoy are not limited in their authority to assign employees, except to the extent it conflicts with Ryan's directives. With regard to how employees are selected to perform the various tasks, Ryan testified that Pagnozzi and McEvoy select employees based on their knowledge that certain employees have job and vehicle preferences, that other employees are more skilled than others at certain tasks, and that certain employees do not work well with certain other employees.

During the course of the work day, Ryan periodically visits the work crews and provides direction at the work site. Pagnozzi and McEvoy separately accompany some, but not all, of the various crews and provide assistance as necessary. In this regard, according to Pagnozzi, he spends his day assisting the maintainers by "popping" manhole covers, inspecting pipelines, and retrieving and distributing parts and supplies. Pagnozzi also testified that he must obtain Ryan's authorization before purchasing any parts or supplies. Maintenance crews are instructed to report any worksite problems to Pagnozzi or McEvoy, who, according to Pagnozzi, in turn report the problem to Ryan for his assessment and determination. However, according to Ryan, in the event of a problem with a vehicle, the two foremen have the independent authority to switch crews from one vehicle to another, or assign the affected crew to a different assignment.

With regard to oversight, Ryan testified that the two foremen remain at the work sites ensuring that the workers are operating in the correct area, that they have the proper equipment and material, that work signs, safety cones and a policemen are present at the job site, that the road is properly blocked off to traffic, and that the tasks are completed safely and accurately. In this regard, according to Ryan, Pagnozzi and McEvoy can re-direct maintenance employees to their proper job site and instruct employees to end their coffee breaks and return to work.

During the course of each work day, Maintenance Foreman Klepacki receives calls from WPCA engineers, city residents, or police and fire departments, reporting

problems affecting the collection system, such as a clogged sewer line. In these circumstances, Klepacki generates a work order and notifies Pagnozzi or McEvoy, who then visit the affected site and determine the nature of the problem and possible means of resolving the problem. According to Ryan, if the problem stems from the collection system, and not the complainant's premises, and needs to be addressed immediately, the disputed foreman calls the appropriate maintenance crews to the affected area to remedy the problem. In this regard, the Petitioner submitted into evidence six written complaint forms authored by the disputed foremen who visited the site, which describe the source of the problem at the site and what, if any, remedial action was undertaken. Two of these complaint forms indicate that maintenance employees were subsequently dispatched to the affected site. The text of the forms does not indicate who specifically requested the dispatch of those maintenance employees to the affected site. Ryan specifically testified that Pagnozzi did so. As described below, Pagnozzi generally testified that he does not dispatch employees to worksites. However, Pagnozzi acknowledged that he does dispatch employees in an emergency situation.

It is undisputed that neither McEvoy nor Pagnozzi participate in the hiring or firing process, evaluate the performance of Local 1522 maintenance employees, discipline or effectively recommend discipline, approve requests for vacation time or other requests for time off, or make recommendations for promotions, pay raises, and employee transfers. There is no evidence that either of these two disputed foremen attend supervisory meetings or provide training to Local 1522 employees.

In support of its contention that McEvoy and Pagnozzi are not supervisors, the Union presented the testimony of Pagnozzi, who has worked in the field operations department since 1997, first as a maintainer, and since April 2003 as Maintenance Foreman.⁸ He testified that he does not direct maintainers in the performance of their tasks, and dispatches maintenance employees to affected worksites only in emergencies or per Ryan's directives. Pagnozzi further testified that he does not resolve disputes among the maintainers or adjust their grievances. Both Ryan and Pagnozzi agree that Ryan exclusively determines whether to grant overtime during the day shift. However, if the dispatcher contacts either Maintenance Foreman after their

⁸ Neither party called Maintenance Foreman McEvoy as a witness.

shift ends to notify them about a “routine” emergency, such as missing manhole or catch basin covers, either foreman is authorized to call maintainers into work to cover those emergencies without first contacting Ryan. In this regard, Pagnozzi acknowledged that he has standing authorization from Ryan to call in a crew on an after-hours basis to immediately replace such covers.⁹ In doing so, he must adhere to the rotating overtime list as provided for in the collective bargaining agreement between the Petitioner and Local 1522. Any disputes arising from overtime assignments to Local 1522 maintainers are handled directly by Ryan, without involvement from Pagnozzi or McEvoy. Pagnozzi further testified that all employees at the worksite, including him, are jointly responsible for safety issues. In this regard, Pagnozzi testified that he reports any safety violations to Ryan, such as a maintainer’s failure to wear a hard hat. However, according to Pagnozzi, all maintenance employees share that same reporting responsibility. Regardless of who reports the infraction, Ryan thereafter solely determines whether disciplinary action is warranted.

2. Conclusion

Based upon the foregoing and the record as a whole, I find that the Petitioner has satisfied its burden of establishing that Pagnozzi and McEvoy are supervisors within the meaning of Section 2(11) of the Act. More specifically, and despite Pagnozzi’s general testimony to the contrary, there is sufficient record evidence that both he and McEvoy assign work to maintenance employees at the outset and during the course of each day, as well as during emergencies that arise outside of the normal workday, based upon their determination as to the priority and nature of the work and the skills and abilities of the maintenance employees. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817 (2003); *The Atlanta Newspapers*, 306 NLRB 751 (1992); *Rose Metal Products, Inc.*, supra. Under these circumstances, secondary indicia can appropriately be considered in assessing supervisory status. In this regard, a finding that Pagnozzi and McEvoy are not supervisors would result in an unrealistic ratio of supervisors to unit employees (i.e., only one supervisor (Ryan) for 26 employees). See *Lawrence Rigging, Inc.*, 202 NLRB 1094 (1973). In addition, Pagnozzi and McEvoy are regularly and frequently the highest

⁹ According to Ryan’s undisputed testimony, the foreman will remain at the site while the repair work is performed.

ranking officials at the Petitioner's field worksites located throughout the City of Bridgeport. See *Pennsylvania Truck Lines*, 199 NLRB 641 (1972).

Accordingly, I find that Maintenance Foremen Pagnozzi and McEvoy are supervisors within the meaning of Section 2(11) of the Act and I shall exclude them from the Unit.

ORDER

IT IS HEREBY ORDERED that the unit is clarified to exclude Maintenance Foremen John Pereira, Mark Pagnozzi and Gene McEvoy. It is further ordered that the petition is dismissed with regard to the Operations Foremen in the Plant Operations Department, the Operations Foreman in Laboratory Operations, and the Operations Foreman in the Pump Station Operations Department.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at www.nlrb.gov. This request must be received by the Board in Washington by July 25, 2006.

Dated at Hartford, Connecticut this 11th day of July, 2006.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34